

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

LEONIDAS SIERRA,

Plaintiff,

v.

CIVIL ACTION NO. 5:22-CV-105
Judge Bailey

UNITED STATES OF AMERICA,

Defendant.

ORDER GRANTING REPORT AND RECOMMENDATION

The above-styled case came before this Court for consideration of United States Magistrate Judge James P. Mazzone's Report and Recommendation [Doc. 66], filed on March 14, 2023. Therein, Magistrate Judge Mazzone recommends that defendant's Motion to Dismiss [Doc. 52] be granted in part and denied in part.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United***

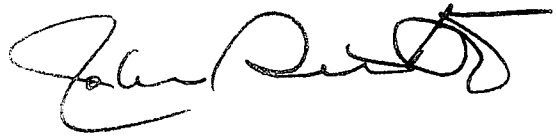
States v. Schronce, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's report and recommendation.

A review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's Report and Recommendation [Doc. 66] is **ORDERED ADOPTED**. For the reasons more fully stated in the magistrate judge's R&R, defendant's Motion to Dismiss [Doc. 52] is **GRANTED IN PART AND DENIED IN PART**. Additionally, defendant's Motion to Dismiss [Doc. 31] is **DENIED AS MOOT**. Further, claim three of the Second Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: April 4, 2023.

A handwritten signature in black ink, appearing to read "John Preston Bailey", with a stylized flourish at the end.

JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE